

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 646 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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STATE OF GUJ

Versus

DANA RADHA BHIL

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Appearance:

MR.UMESH TRIVEDI ADDL. PUBLIC PROSECUTOR for  
Appellant.

No one appeared on behalf of the respondent despite  
service.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 21/09/96

ORAL JUDGEMENT

This Criminal Appeal is directed against the order dated 8.4.1992 passed by the Chief Judicial Magistrate, Bhuj-Kachhh in Criminal Case No.1889 of 1991 whereby the respondent has been acquitted of the offences under section 25(1)(B)(a) of the Arms Act, 1959.

The prosecution came with the case that Shri R.B.Odedara, PSI, Bhuj Taluka Police Station got the information that the respondent was having in his possession an unauthorised country made rifle without licence. On that basis a search warrant was obtained from the District Magistrate against the respondent on 12.4.1991. On the basis of this search warrant dated 12.4.1991 search was made on 16.4.1991 along with panchas at the place of residence of the respondent at Sumarasar village, Taluka Bhuj. In this search a country made single barrel muzzle load rifle was recovered from a hut from the premises in which the respondent was living. On this basis the respondent was prosecuted for the offence under section 25(1)(B)(a) of the Arms Act. The rifle which was recovered had been sent to the forensic science laboratory and the report from the forensic science laboratory had been received along with the forwarding letter and thereafter the sanction was obtained from the District Magistrate and the chargesheet was filed in the Court. The Court framed charge against the respondent under section 25(1-B)(a) of the Arms Act. The respondent denied the charges and claimed trial and after trial the Chief Judicial Magistrate, Bhuj-Kachchh acquitted the respondent and hence this appeal by the State of Gujarat.

The prosecution in this case has examined three witnesses. One is Shri Gopal Ramji Chad, PW.1, Shri Ismail Jamalshaw, PW 2 and Shri R.B.Odedara PW 3. PW 1 Gopal Ramji Chad was a panch witness with regard to the recovery of unauthorised arm and so is PW 2 Ismail Jamalshaw. Both these witnesses have turned out to be hostile. The only witness in support of the prosecution case is concerned PSI i.e. Rambhai Bhurabhai Odedara who has deposed that he had obtained search warrant from the District Magistrate, Exh.9 and he had conducted search on 16.4.1991. On the basis of this search warrant alongwith the panchas, he had obtained thumb impression of the panchas on the search warrant. He stated that the country made single barrel muzzle load rifle was found from the 'Bhunga' (hut) from the premises in which the respondent was living. The respondent had no licence with regard to this rifle. He had prepared panchnama (Exh.8) on which the panchas had signed in his presence. He himself had also signed. He had conducted investigation. The rifle was in working condition. It had been sent to the Forensic Science Laboratory, Ahmedabad, wherefrom the report had been received along with covering letter which was at exhibits 13 and 14. Thereafter he had got exhibit 15 from the District Magistrate and on that basis challan had been filed.

I have heard Mr. Umesh Trivedi, learned Addl. P.P. and have gone through the available record. The document exhibit 9 search warrant is dated 12.4.1991 but it has not been explained by the prosecution as to why the search was conducted on 16.4.1991 on the basis of the search warrant dated 12.4.1991. The delay of four days in conducting the search therefore remained unexplained. I have also gone through the charge dated 14.11.1991 which was framed against the respondent vide exhibit 4 and reply dated 14.11.1991 and the statement dated 24.2.1992 purporting to be a statement under section 313 of the Code of Criminal Procedure. While framing the question, learned Chief Judicial Magistrate has failed to put the deposition made by the witnesses and the question as framed by the Chief Judicial Magistrate show that all that has been put to the Accused is that the statements of the witnesses have been recorded in his presence and what he has to say about it. The contents of the deposition of no witness i.e. the gist of actual statement has not been included in the question. The panchas have turned out to be hostile and the only evidence which remains against the respondent is that of PW 3 i.e. concerned P.S.I.

No doubt in a given case the conviction can be based on the testimony of Investigating Officer alone but here is a case in which the Trial Court has acquitted the respondent by giving benefit of doubt and for diverse reasons and the aspects as have been considered above, it cannot be said that in this case the two views are not possible. In such a situation I find it unsafe to reverse the order of acquittal and to convict the respondent when I find that materials do exist on the basis of which the benefit of doubt could be given to the respondent.

Accordingly, I do not find it to be a fit case to interfere with the order of acquittal. The Appeal is therefore dismissed.

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